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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/725,792	11/29/2000	William J. Sequeira	600253-031	3061

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EXAMINER	
SALTARELLI, DOMINIC D	
ART UNIT	PAPER NUMBER
2421	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/725,792	SEQUEIRA, WILLIAM J.	
	Examiner	Art Unit	
	DOMINIC D. SALTARELLI	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *06 October 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *19-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *19-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date. _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 6, 2008 has been entered.

Response to Arguments

2. Applicant's arguments filed October 6, 2008 have been fully considered but they are not persuasive.

First, applicant argues that the claimed feature of a "procedure to change the at least one other event" was not treated by the examiner as a whole, as Tomoika is disclosed as changing one other event to mean changing the broadcast time of a subsequent program rather than the claimed "subsidiary event" (applicant's remarks, page 2).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.,* 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In this case, Tomoika teaches adjusting the timing information of all

programming scheduled due to changes which would otherwise disturb the integrity of the schedule. Throckmorton is introduced as evidence to show that stand-alone television programming is not the only type of content in the art which is scheduled for delivery.

Which leads to applicant's second argument, that Throckmorton does not teach "subsidiary content" as claimed (applicant's remarks, page 3).

In response, the cited section of Throckmorton states:

"The term associated data as used herein refers to a stream of data generated separately from the primary data but having content that is relevant to the primary data in general **and usually relevant to a particular program of primary data** and is in this sense associated. Associated data is intended to enhance the utility of the primary data stream."

Given that the claimed definition of a subsidiary event as claimed is an event that "provides a viewer with additional multimedia data that enhances the event", it is abundantly clear that Throckmorton teaches precisely what is being claimed in regards to a subsidiary event, as the associated data is relevant to **particular programs** within the primary data stream, thus there are distinct segments of associated data which qualify as events (see for example Throckmorton, col. 4, lines 60-65).

Third, applicant argues that the combination of Tomoika and Throckmorton constitutes hindsight on the part of the examiner, as the particular method by which

Throckmorton inserted the associated data is upon broadcast, stating that said associated data is thus not an event requiring a predefined time block in order to be compatible with Tomoika (applicant's remarks, pages 3-4).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, Tomoika provides a clear teaching of adjusting scheduling data to preserve the integrity of a schedule in spite of changes to elements within the schedule. Throckmorton teaches inserting the associated data alongside the primary data stream at the proper time is done using timecodes associated with the primary data stream (Throckmorton, col. 4, lines 52-65). If a change to a broadcasting schedule were to take place, these embedded timecodes would have to be updated prior to broadcasting of the primary data stream else the associated data would no longer by synchronized as desired.

Fourth, applicant argues the combination of Tomoika and Throckmorton would result in a different system than applicant's claimed invention, stating that the associated data would be treated as a separate program and thus broadcast at a time

other than when the program event with which it is associated, "defeating the purpose of enhancing the original program and making little sense to the viewing audience" (applicant's remarks, page 4).

First, in response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., broadcasting the subsidiary event at the same time as the event) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Second, even if this feature were being claimed, the combination of Tomoika and Throckmorton anticipates the invention, as Throckmorton is explicit in stating that the associated data is synchronized with the primary data in such a way that it would not interfere at all with the primary data, such that a receiver which could only view the primary data would continue to operate without interruption (Throckmorton, col. 3, lines 55-67), thus it is fully compatible with Tomoika's broadcasting system without at all affecting the intended use or operation. Further, Throckmorton explicitly teaches sending a primary data stream and its associated data in a synchronized fashion (Throckmorton, col. 4, lines 52-65). The combination would result in Tomoika's system operating precisely as disclosed, with the added benefit of associated data being synchronized with standard broadcasts. Tomoika's system is intelligent enough to recognize that changes to a schedule require reassigning broadcast times to all content

affected by the change, and would thus apply to the timecodes used to insert the associated content as well as the broadcast start times of subsequent programs.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 19-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tomoika et al. (6,606,748, of record) [Tomoika] in view of Throckmorton et al. (5,818,441, of record) [Throckmorton].

Regarding claims 19, 23, and 27, Tomoika discloses a method, system, and computer program product embodied on a computer readable medium for synchronizing and propagating changes to an event comprising:

assigning means for assigning an event an event identifier, the event comprising multimedia data (fig. 1, which collects the program guide data and parses it into individually accessible portions of event data, referred to as "framework data" and "variation data", col. 9 line 66 – col. 10 line 45);

first registering means for registering the event in a first table (the first table is the aforementioned "variation data", col. 14, lines 35-45 and col. 20, lines 28-30) wherein said first table stores the event identifier and an event trigger (col. 20, lines 11-24);

second registering means for registering interests of another event in a second table (creation of the management data in the management data storage section, col. 11, lines 1-15 and col. 18, lines 47-67) wherein said second table stores a procedure to execute for thed event trigger (such as for program shifts, if a first program is lengthened by an amount, subsequent programs on the same channel must then be altered accordingly, col. 20, lines 45-65);

changing means for changing the event wherein the change generates an event trigger (col. 18, lines 24-31, new variation data is a change to one or more event, and will include an event trigger generated by the information provider regarding the changes, col. 20, lines 11-24 and 45-65);

first inspecting means for inspecting the first table to identify the event trigger for the generated event trigger (fig. 2, which includes means for inspecting the variation data storage section 12B);

second inspecting means for inspecting the second table for the procedure to execute upon identifying the event trigger for the event identifier (fig. 2, which includes means for inspecting the management data storage section 12C); and

executing means for executing the procedure to change one of the other events in response to identifying said procedure upon inspecting the second table (col. 20, lines 45-65).

Tomoika fails to disclose said at least one other event is a subsidiary event that provides the viewer with additional multimedia data that enhances said event.

In an analogous art, Throckmorton discloses a multimedia distribution system wherein additional content is associated with primary content, said additional content is subsidiary content that provides the viewer with additional multimedia data that enhances said primary content, enhancing the utility of the primary content stream to a user (col. 3, lines 55-67).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method, system, and computer program of Tomoika to include at least one other event is a subsidiary event that provides the viewer with additional multimedia data that enhances said event, as taught by Throckmorton, enhancing the utility of the event (primary content). The synchronization of events applies to subsidiary events because said events are time dependent upon the primary event, and any changes to the primary event must be reflected in the subsidiary events (see Throckmorton, col. 4, lines 52-65).

Regarding claims 20 and 24, Tomoika and Throckmorton disclose the method and system of claims 19 and 23, wherein the first inspecting means uses the event identifier (to identify the even being changed, such as the duration of a particular movie, Tomoika, col. 20, lines 45-65).

Regarding claims 21 and 25, Tomoika and Throckmorton disclose the method and system of claims 19 and 23, wherein the second inspecting means uses the event identifier and the event trigger (in the case of an extended movie, the movie itself is recognized by the second means in addition to the value by which its duration is being extended, Tomoika, col. 20, lines 45-65, when being manipulated according to the management data, Tomoika, col. 19, lines 1-15).

Regarding claims 22 and 26, Tomoika and Throckmorton disclose the method and system of claims 19 and 23, wherein execution of the procedure modifies a data model (the program guide seen in fig. 5 of Tomoika, wherein the changes taking place are shown in fig. 4 of Tomoika).

Conclusion

5. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DOMINIC D. SALTARELLI whose telephone number is (571)272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dominic D Saltarelli/
Examiner, Art Unit 2421